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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 936 OF 2002

Pradeep Shahu Kasbe ... Appellant

V/s

The State of Maharashtra ... Respondent

Mr. D.G. Khamkar for the appellant.

Mrs. M.M. Deshmukh, A.P.P. for the State.

CORAM: S. B. MHASE &
SMT. NISHITA MHATRE, JJ.

DATED: 9TH FEBRUARY, 2007.

ORAL JUDGMENT (PER SMT. MHATRE, J.):

1. This appeal is directed against the judgment and order passed by the IV Additional Sessions Judge, Solapur in Sessions Case No. 258 of 2001. The appellant accused has been convicted under Section 498-A and sentenced to suffer rigorous imprisonment for two years and payment of fine of Rs.1000/-. He has also been convicted and sentenced under Section 302 of the Indian Penal Code and directed to pay a fine of Rs.2000/-. Both sentences are directed to run concurrently.

2. The appellant has allegedly killed his wife Rajani by setting her ablaze on 20.7.2001. Rajani sustained 88% burns. She was admitted to the Civil Hospital for treatment immediately after the incident. However, she succumbed to injuries on 22.7.2001. During the time that Rajani was hospitalized, she has given three statements which have been recorded as to the cause of her burns. According to the prosecution, she has also made a oral dying declaration to her father.

3. The Trial Court, after examining the dying declarations on record, has held that the dying declarations are consistent with each other and, therefore, believable. The Sessions Court has, on this basis, convicted the accused appellant and sentenced him as aforesaid.

4. Seven witnesses have been examined by the prosecution to prove its case before the Trial Court. PW-1 is the Special Executive Magistrate who recorded the dying declaration at Exh.12 in the proceeding. PW-6 is the police head constable who recorded the first statement made by the victim at Exh.35 soon after she was admitted at 2.45 am. The third dying declaration which is at Exh.37 before the Trial Court was recorded by PW-7, the investigating officer. PW-5 is the doctor

who has deposed about the condition of the victim when she made the statements which were recorded by PW-1, PW-6 and PW-7. PW-2, the father of the victim was examined essentially to prove the charge of the prosecution under Section 498-A. He has also stated in his deposition that when he reached the Civil Hospital, Solapur, where Rajani was admitted, she told him that her husband had poured kerosene on her and had set her ablaze. PW-3 is a panch witness who has proved the spot panchanama. PW-4 is the photographer who shot photographs of the scene of offence.

5. Thus we are faced with multiple statements of the victim which have been recorded, including one oral declaration of the victim. On a perusal of each of the three declarations, we find that there is a common thread running throughout the narration, and that is: on 20.7.2001 the accused appellant had quarrelled with his wife Rajani, the quarrel occurred because he suspected her fidelity; the accused appellant was also aggrieved because his demand for a gold ring was not fulfilled by Rajani's father when her brother got married; the accused appellant doused the victim with kerosene and set her ablaze with the matchstick. In all the statements made by the victim, she has named the accused appellant as the person who caused the burn

injuries which she sustained. The contents of the oral declaration made to PW-2 are similar to the recorded statement of the victim. Thus we have no hesitation in accepting the case of the prosecution that it is the accused appellant who has doused the victim with kerosene and has set her ablaze.

6. Mr. Khamkar appearing for the appellant relied on rulings reported in **(1) (2005) 9 SCC 769 between State of Punjab v/s Parveen Kumar; (2) 2005 All MR (Cri) 1599 between Suresh s/o Arjun Dodorkar (Sonar) v/s State of Maharashtra; and (3) (2003) 1 SCC 112 between CHACKO v/s State of Kerala,** in support of his submission that where there are multiple dying declarations and there are certain discrepancies in those statements, the Court should discard the dying declarations. We have considered this submission of the learned advocate for the appellant. There can be no quarrel with the proposition of law advanced by the learned advocate. However, in the facts of this case, we find that there are no discrepancies in the dying declarations and, therefore, the aforesaid judgments are not applicable to this case.

7. Apart from the dying declarations, there is corroborative evidence on record to indicate that it is

the appellant who is involved in causing the homicidal death of the victim. The panchanama of the scene of offence has been proved through PW-3. Burnt pieces of a red saree and a yellow blouse were found in the room where the incident occurred. Ash, broken pieces of green bangles, all smelling of kerosene, were also found. Besides this, a plastic bottle containing kerosene and a match-box were seized from the spot of the incident. In the cross-examination, the witness has admitted that a stainless-steel vessel and a "mangalsutra" were found lying near the scene of offence which were also seized by the police.

8. We have perused the judgment and order impugned in the present appeal. We find that the Trial Judge has marshalled the evidence correctly and has drawn proper inferences. On our independent assessment of the evidence before the Trial Court, we have drawn the same conclusions and found that the appellant has murdered his wife Rajani.

9. However, in our opinion, the judgment of the Trial Court convicting the appellant accused under Section 498-A is incorrect. PW-2 who was examined to establish the charge has not been able to prove the ingredients which are necessary to bring home the charge under

Section 498-A of the Indian Penal Code. We, therefore, set aside and quash the conviction of the appellant under Section 498-A of the Indian Penal Code.

10. The appeal is partly allowed. The conviction and sentence of the appellant under Section 498-A of the Indian Penal Code is set aside. The appellant is acquitted of the offence under Section 498-A I.P.C. The fine imposed by the Trial Court in respect of the conviction under Sec.498-A if paid by the appellant shall be returned to him. The conviction of the appellant for the offence under Section 302 of the I.P.C. and the sentence imposed on him are upheld.

11. The appeal is disposed off accordingly.

(SMT. NISHITA MHATRE, J.) (S.B. MHASE, J.)